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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF SAN JOSE AND  
THE CITY OF SANTA CLARA REGARDING  
RESPONSIBILITIES FOR PLANNING, BUILDING AND INSPECTION  
ACTIVITIES, AS WELL AS RELATED PUBLIC WORKS IMPROVEMENTS,  
FOR THE PROPOSED RESIDENTIAL DEVELOPMENT ALONG  
CAMPBELL AVENUE BY SOBRATO DEVELOPMENT COMPANY**

**PREAMBLE**

This Memorandum of Understanding ("MOU") is made and entered into this 18th day of November, 2008 (the "Effective Date"), by and between the City of San Jose, a chartered municipal corporation of the State of California with its primary business address located at 200 E. Santa Clara Street, San Jose, California 95113 ("San Jose"), and the City of Santa Clara, a chartered municipal corporation of the State of California with its primary business address located at 1500 Warburton Avenue, Santa Clara, California 95050 ("Santa Clara"). San Jose and Santa Clara may be referred to collectively herein as the "Cities" and may be referred to individually as a "City."

**RECITALS**

**WHEREAS**, Sobrato Development Company ("Sobrato") proposes to develop a multi-family residential development of up to 259 dwelling units on 1270 Campbell Avenue an approximately 5.11 grossacre parcel (Assessor's Parcel No. 230-14-026) which site is partially located within the boundaries and jurisdiction of San José and partially located within the boundaries and jurisdiction of Santa Clara, all as more particularly shown upon that certain "Site Map" attached hereto as Exhibit A and incorporated herein by this reference (the "Project Site"); and

**WHEREAS**, Sobrato has submitted various development permit applications to San José (File No[s]. PDC07-081, PD08-039) and to Santa Clara (File No[s]. PLN2008-07068) seeking to allow for the proposed Project described herein to be developed on the Project Site, all as more fully described within that certain "Project Description" attached hereto as Exhibit B and incorporated herein by this reference (the "Project"); and

**WHEREAS**, both San José and Santa Clara will consider taking discretionary actions related to the Project, but mutually desire San Jose to act as the lead agency and Santa Clara to act as a responsible agency in analyzing the Project under and pursuant to the provisions of the California Environmental Quality Act of 1970, together with related guidelines and local regulations promulgated there under, all as amended from time to time; and

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**WHEREAS**, for the sake of clarity and cooperation, San Jose and Santa Clara desire to outline their respective rights and responsibilities and mutual understandings with regard to reviewing, processing and planning for construction, inspection and related development activities for the Project, including but not limited to plan check, permit processing and issuance, public works inspections, fire safety inspections, and levy of and collection of fees or taxes related to all such activities.

**NOW, THEREFORE**, the Cities understand and agree as follows:

### **AGREEMENT**

#### **1. Scope of Agreement.**

- A. This MOU applies exclusively to the activities of San José and Santa Clara in connection with those certain development approvals to be considered by each City in connection with the Project, including without limitation plan check, permit issuance, Building Division inspections, public works inspections, fire safety inspections, and levy of and collection of fees in connection with such activities. The plan check, permit issuance, Building Division inspections, fire safety inspections, and levy of and collection of fees in connection with such activities shall be performed by the City of San Jose in perpetuity for the life of the subject project. This MOU is not intended to govern the provision of emergency services by either City on the Project Site. Similarly, the City of San Jose will not provide their Code Enforcement services to City of Santa Clara.
- B. The Cities expressly understand and agree that nothing contained in this MOU is intended to, nor shall, in any way bind either City to act in any particular manner upon any of the development approval applications submitted to that City for the Project and that this MOU in no way binds a City to approve, nor presupposes that a City shall approve, any particular development permit or approval application submitted to that City in connection with the Project.
- C. The Cities expressly understand and agree that nothing contained in this MOU is intended to, nor shall, in any way delegate or grant any legislative or police power of a City to another City, including but not limited to any authority regarding land use matters.

#### **2. Definitions.**

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- A. "Certificate of Occupancy" means a final certificate issued by San Jose entitling occupation of any part of the Project on the Project Site.
- B. "Cross-boundary Structure" means a structure within the Project that is built across the jurisdictional boundary line between San Jose and Santa Clara, specifically Structure(s) as shown upon Exhibit A, the Site Map.
- C. "Cross-boundary Tenant Space," means tenant space within the Project that is built across the jurisdictional boundary line between San Jose and Santa Clara, located within Structure(s) as shown upon Exhibit A, the Site Map.
- D. "Future Tenant Improvements" means any improvement to a portion of a building within the Project for which a Certificate of Occupancy has already been obtained.
- E. "San Jose Structure" means a structure within the Project that is located entirely within the jurisdictional boundaries of San Jose, as shown upon Exhibit A, the Site Map.
- F. "San Jose Tenant Space" means tenant space within the Project that is located entirely within the jurisdictional boundaries of San Jose.
- G. "Santa Clara Structure" means a structure within the Project located entirely within the jurisdictional boundaries of Santa Clara, as shown upon Exhibit A, the Site Map.
- H. "Santa Clara Tenant Space" means tenant space within the Project that is located entirely within the jurisdictional boundaries of Santa Clara.
- I. "Shell" means a structure of the Project that is built with the following elements completed: foundation, exterior walls, roof, and rough in sub-trade works, but without improvements necessary for obtaining a Certificate of Occupancy.
- J. "Tenant Improvement" means improvements necessary to obtain the first Certificate of Occupancy for a building or portion of a building within the Project.

**3. Planning Responsibilities and Processes; Applications and Fees.**

- A. Santa Clara.

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1. For each Santa Clara Structure and Santa Clara Tenant Space and each Cross-Boundary Structure and Cross-Boundary Tenant Space within Structure(s), as identified on the Site Map, as well as for all Tenant Improvements within those structures, Santa Clara hereby authorizes San José to process any and all building permit applications for and on behalf of Santa Clara pursuant to the provisions of the California Building Code, as amended by San José, as of the date such permit is issued.
2. Santa Clara shall require the owners of property located in Santa Clara, either in whole or in part, within the Project Site to submit to San José any and all such building permit applications as are required under the Municipal Code of the City of Santa Clara.
3. Santa Clara hereby determines and agrees that the Building Official for San José shall be the administrative and approval authority for all building permits for the Project on the Project Site and for building design for the Santa Clara Structures and Tenant Spaces, as well as for subsequent building permit amendments and adjustments as may be needed or required for future proposed architectural or other minor changes to these structures or tenant spaces.
4. San José shall be the entity responsible for the issuance of building permits for the Santa Clara Structures and Tenant Spaces and the Cross-Boundary Structures and Tenant Spaces located in Structure as shown on the Site Map, and for the Tenant Improvements in Structure as shown on the Site Map, and for the imposition, collection and retention of all permit and inspection fees related to such work.
5. Santa Clara hereby delegates to San José the authority to impose, collect, and retain any and all development and impact fees related to work performed by San Jose under this MOU.
6. Santa Clara shall assess and collect any taxes and assessments associated with such applications for the Project based upon the proportional amount of the Cross-Boundary Structure or Tenant Space or the proportional amount of the Tenant Improvements that are within the jurisdictional boundaries of Santa Clara, as appropriate under applicable taxing regulations.

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7. For the portion of the Cross-Boundary Tenant Spaces and Tenant Improvements that are within the jurisdictional boundary of Santa Clara, San José shall not issue a building permit prior to receipt of written acknowledgment by Santa Clara of the payment of all applicable Santa Clara fees, taxes, and assessments.
8. Santa Clara hereby delegates to San Jose the authority to collect monies due to Santa Clara for traffic impacts associated with Project development on the Project Site, prior to issuance of building permits by San Jose. The method of appropriately expending those funds collected shall be addressed by and shall occur in accordance with the provisions of Section 7 of this MOU.
9. Santa Clara shall collect in-lieu affordable housing fees pursuant to Santa Clara's affordable housing rules and regulations for those units located within the jurisdiction of Santa Clara, prior to issuance of any building permits by San José.

B. San Jose.

1. For each San Jose Structure and San Jose Tenant Space, and for the Cross-Boundary Structures, San Jose shall require the owners of the property to submit to San Jose such applications as are required for the Project under the Municipal Code of the City of San Jose.
2. The Planning Official for the City of San Jose shall be the approval authority for all development and planning permits required for the site design and building design for the San Jose and Santa Clara Structures, San Jose and Santa Clara Tenant Spaces, and associated parking garages, and any subsequent permit amendments and adjustments for future proposed architectural or other minor changes to these structures upon receipt of written verification that the development and planning permit application complies with the zoning entitlement approval by Santa Clara prior to the issuance of such permit or approval by San Jose. The Building Official for the City of San Jose shall be the approval authority for all building permits for the Project Site and for building design for the San Jose and Santa Clara Structures and Tenant Spaces and Cross-Boundary Structures and Tenant Spaces.
3. In addition to the authorities delegated to San José elsewhere in

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this Agreement, San Jose shall be the entity responsible for the imposition, collection and retention of all fees associated with such development permit or approval applications for the Project and Project Site as to the San Jose structures and San Jose Tenant Spaces.

4. In addition to the authorities delegated to Santa Clara elsewhere in this Agreement, Santa Clara shall be the entity responsible for the imposition, collection and retention of all fees associated with rezoning and associated entitlements for the Project and project site as to the Santa Clara Structures and Santa Clara Tenant Spaces.
5. San Jose shall impose any and all applicable taxes and assessments based upon the proportional amount of the Cross-Boundary Structures and Tenant Spaces that is within the jurisdictional boundaries of the City of San Jose, subject to the provisions of Section 3A in connection with additional fees and charges due to San José for work performed on behalf of Santa Clara. For Cross-Boundary Structures and Tenant Spaces, San Jose shall not issue a permit prior to receipt of written acknowledgment from Santa Clara of the payment of applicable Santa Clara taxes and assessments.
6. Santa Clara shall collect from San Jose, and San Jose shall promptly remit, any fees and costs for work performed by Santa Clara related to the relocation of Santa Clara public facilities in the public right-of-way associated with Project development.
7. San Jose shall receive written verification from Santa Clara that the Building Permit application complies with the Planned Development Zoning approved by Santa Clara prior to the issuance of said Building Permits.
8. Prior to any approval of a tentative subdivision or parcel map, San Jose shall secure written verification from Santa Clara that Santa Clara has approved a General Plan Amendment consistent with the approved development or that a boundary adjustment satisfactory to both municipalities has been completed.

- C. Future Tenant Improvements. Future Tenant Improvements, including plan check and inspection services, will follow the division of responsibilities as

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outlined in this MOU, unless a municipal boundary adjustment is approved, in which case the City within which all of the Tenant Spaces are located will assume all responsibilities for services those Tenant Spaces.

**4. Building and Fire Safety Inspection Responsibilities and Fees.**

A. Santa Clara. For the Tenant Improvements in the Santa Clara Tenant Spaces and the Cross-Boundary Tenant Spaces, Santa Clara will provide fire safety services, subject to the provisions of this Section.

B. Santa Clara hereby determines and agrees that the Fire Chief for San José shall be the administrative and approval authority for all fire inspections for the construction of the Project on the Project Site, including the Santa Clara Structures and Tenant Spaces. C. Santa Clara hereby delegates to San José the authority to perform such fire inspection services for the Project on those portions of the Project Site located in Santa Clara, which services shall be performed in accordance with the California Fire Code as that Code is administered by San Jose; provided, however, that where Santa Clara's fire safety inspection standards are more stringent than San José's, Santa Clara shall notify San José in writing prior to the commencement of fire inspections for the Project of those more stringent standards and, upon receipt of that notice, San Jose agrees to apply those more stringent standards as to the Santa Clara Structures and Santa Clara Tenant Spaces.

D. Santa Clara hereby delegates to San José the authority to impose, collect, and retain any and all fees related to fire inspection work performed by San Jose in Santa Clara pursuant to this MOU.

E. San Jose. For all structures and spaces on the Project Site, San Jose will provide building permit services, including inspection services, and fire inspection services.

**5. Record Retention.**

All records shall be maintained by each City according to their retention policies and procedures. Each City may impose record retention fees pursuant to applicable laws on the owner of the property for any records related to the Project located partially or wholly within that City's jurisdictional boundaries or for which work was performed generating records to be maintained.

**6. Cooperation.**

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Both Cities will cooperate and/or provide reasonable access to their respective consultants, engineers and contractors during the course of development of the Project, as necessary for each City to complete their review, approval and/or inspection of the Project or components thereof.

**7. Public Right-of-Way Work.**

- A. Santa Clara. Santa Clara shall require the owners of the property to obtain an Encroachment Permit from Santa Clara for all public street improvement work along Campbell Avenue that is within Santa Clara's jurisdiction, unless a separate MOU is signed pursuant to Section 7.C.2 of this MOU that provides otherwise.
- B. San Jose. San Jose shall require the owners of the property to obtain an Encroachment Permit from San Jose for all public street improvement work within San Jose's jurisdiction, unless a separate MOU is signed pursuant to Section 7.C.2 of this MOU that provides otherwise.
- C. Caltrans.
  - 1. Santa Clara and San José desire and agree that San José shall be the primary contact and lead entity in negotiations and discussions with Caltrans in connection with those certain right-of-way improvements and traffic signal modifications anticipated to be installed adjacent to or near the Project Site along El Camino Real (State Route 82) and Campbell Avenue (the "Public Right Of Way Improvements"). Any agreement with Caltrans will require prior written approval of the City of Santa Clara and the City of San Jose. San José shall work with Caltrans on those Public Right Of Way Improvements on behalf of San José and Santa Clara. San Jose shall be entitled to any monies provided by other entities for those Public Right Of Way Improvements.
- D. Supplemental MOU. San José and Santa Clara each hereby authorize their respective Directors of Public Works to negotiate and enter into a supplemental MOU in connection with the coordinated implementation of the Public Right Of Way Improvements in a manner consistent with the provisions of this MOU.

**8. Mutual Indemnity.**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be



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imposed between the Cities pursuant to California Government Code section 895.6, the Cities agree that all losses or liabilities incurred by a City shall not be shared pro rata but instead Santa Clara and San Jose agree that pursuant to California Government Code section 895.4, each of the Cities hereto shall fully indemnify and hold the other City, their officers, council members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying City, its officers, council members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such City under this MOU. No City, nor any officer, councilmember, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other City hereto, their officers, council members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other City under this MOU.

**9. Notices.**

All notices to either City shall be in writing, unless otherwise requested, and shall be addressed as follows:

To San Jose:

For Public Works Matters:

Katy Allen, Director of Public Works  
200 East Santa Clara Street  
San Jose, CA 95113  
Or by Facsimile at (408) 292-6296

For Planning and Building Matters:

Joe Horwedel, Director of Planning, Building, and Code Enforcement  
Ed Tolentino, Chief Building Official  
200 East Santa Clara Street  
San Jose, CA 95113  
Or by Facsimile at (408) 292-6055

For Fire Inspection Matters:

David Schoonover, Fire Marshal  
200 East Santa Clara Street  
San Jose, CA 95113  
Or by Facsimile at (408) 292-6067

To Santa Clara:

For Public Works Matters:

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Rajeev Batra, Director of Public Works/City Engineer  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 985-7936

For Planning Matters:  
Kevin Riley, Director of Planning and Inspection or  
For Building Matters:  
Sheila Lee, Building Official  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 247-9857

For Fire Inspection Matters:  
Martin Von Raesfeld, Fire Marshal  
City of Santa Clara  
1675 Lincoln Avenue  
Santa Clara, CA 95050  
or by facsimile at (408) 241-3006

Either City may change its notice contact person, address or facsimile number by providing written notice of the change to the other City in the manner provided for in this Section of this MOU.

**10. Miscellaneous.**

- A. Term. This MOU shall become effective on the Effective Date set forth in the Preamble of this MOU and shall remain in effect until terminated by mutual written consent of the Cities hereto or by order of a court of competent jurisdiction.
- B. Entire Understanding. This MOU contains all of the agreements, understandings and conditions entered into and made by and between San José and Santa Clara as to the matters covered herein and may not be modified orally, or in any manner, other than by an agreement in writing signed by each City or their successors in interest.
- C. Successors in Interest. This MOU and all of its terms, covenants and conditions, shall apply to and bind the successors and assigns of each City to the fullest extent allowed by law.

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- D. Headings. The headings of the several sections and paragraphs of this MOU are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this MOU and shall not be construed to affect in any manner the terms and provisions or the interpretation or construction of this MOU.
- E. Exhibits. All exhibits referred to in this MOU are by such reference incorporated into this MOU and shall be deemed a part of this MOU as if fully set forth in this MOU.
- F. Severability. In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions of this MOU which shall remain in full force and effect to the maximum possible extent.
- G. Waiver. A waiver of any term, condition or covenant, or breach of any term, condition or covenant, of this MOU by either City shall not be construed as a waiver of any other term, condition or covenant, or breach of any other term, condition or covenant, of this MOU by that City.
- H. Interpretation; Enforcement. This MOU and the agreements embodied herein shall be governed and construed in accordance with the statutes and laws of the State of California. Any action brought to enforce or construe the provisions of this MOU shall be brought in the Superior Court of the State of California, Santa Clara County.

The Cities acknowledge and accept the terms and conditions of this MOU as evidenced by the following signatures of their duly authorized representatives. It is the mutual intent of the Cities that, for the sake of clarity and convenience, this MOU shall become effective and operative as of the Effective Date first enumerated above, notwithstanding the date that this MOU is executed by each City.

**CITY OF SANTA CLARA, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
HELENE L. LEICHTER

By: \_\_\_\_\_  
JENNIFER SPARACINO

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City Attorney

City Manager

ATTEST:

1500 Warburton Avenue  
Santa Clara, California 95050  
Telephone: (408) 615-2210  
Facsimile: (408) 241-6771

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

**CITY OF SAN JOSE, CALIFORNIA,  
a chartered California municipal corporation**

APPROVED AS TO FORM:

\_\_\_\_\_  
RENEE GURZA  
Senior Deputy City Attorney

By: \_\_\_\_\_  
LEE PRICE, MMC  
City Clerk

**[EXHIBITS A, B AND C TO BE ATTACHED]**